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Attorneys for Defendant HERBERT M. GOTTLIEB

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

NACIO SYSTEMS, INC., a Nevada  
Corporation,

Plaintiff,

vs.

HERBERT M. GOTTLIEB, an individual;  
SWIDENT, LLC, a California Limited  
Liability Corporation,

Defendant.

) Case No. C O7 3481 PJH

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)

) DECLARATION OF DARYL FRAHM IN

) OPPOSITION TO TEMPORARY

) RESTRAINING ORDER (WITHOUT PRIOR

) NOTICE) TO PRESERVE EVIDENCE AND

) ORDER TO SHOW CAUSE RE

) PRELIMINARY INJUNCTION

)

) Date: August 1, 2007

) Time: 9:00 a.m.

) Crtrm: 3, 17<sup>th</sup> Floor

I, DARYL FRAHM, declare:

1. Last year and at all material times, I was in management at a company called PS'Soft, Inc. which is a enterprise software company. At the time, PS-Soft was not and is not a competitor of Attest, Nacio or GASP.

2. In early 2006, PS'Soft was selling a software product that worked in conjunction with Microsoft's System Management Server ("SMS") product line. The PS'Soft software product named "SW Library" is sold to large corporations to help in the evaluation of valid software licenses

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DECLARATION OF DARYL FRAHM IN OPPOSITION TO TEMPORARY RESTRAINING ORDER (WITHOUT PRIOR NOTICE) TO PRESERVE EVIDENCE AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

1 in the corporate environment by performing a software license recognition screening algorithm.  
 2 PS'Soft was evaluating new methods and potential opportunities to enhance the performance of SW  
 3 Library. As part of that research, on our own we came across a product, in the market place known  
 4 as "GASP" which we learned was sold by the Attest Division of Nacio Systems, Inc. As part of that  
 5 search, we located the Attest phone number and ended up speaking with Herb Gottlieb, who I  
 6 understood at the time was either the President of the Attest Division or had recently become a  
 7 consultant only to Attest. I inquired as to whether or not PS'Soft could evaluate GASP and the  
 8 potential for a working relationship between the Nacio/Attest and PS'Soft. Mr. Gottlieb referred me  
 9 to a Mr. Murray Goldenberg whom I understood to be the President or Chief Executive Officer of the  
 10 company. Subsequently I met with both Mr. Gottlieb and Mr. Goldenberg; Mr. Gottlieb for the  
 11 technical product evaluation and Mr. Goldenberg on the potential business relationship.  
 12 Negotiations over a potential acquisition of GASP software by PS'Soft were with Mr. Goldenberg.  
 13 After meeting with Mr. Goldenberg, PS'Soft determined that it was not in our best interest to do  
 14 business with Murray Goldenberg particularly that the GASP product was not a good fit to help solve  
 15 the product performance issues that we were working on for SW Library and as a product fit for our  
 16 company. The following are thought processes and reasons:

15 a. GASP was a product more oriented to small to medium size businesses. We  
 16 were looking to solve a problem for the Fortune 1000 customer.

17 b. The amount of money that Mr. Goldberg asked for to acquire the GASP  
 18 product was outside of the budget that was allocated to solve our product performance issue. We  
 19 further felt that acquiring a product that had its own development issues would only compound our  
 20 product issues not reduce them.

21 c. We understood from Mr. Goldenberg that he was in the process of refreshing  
 22 his software through some Argentinean outsourcing company. This led to some concern about the  
 23 liability and led me in turn to "Google" Mr. Goldenberg to evaluate how he would be as a strategic  
 24 business partner. I had not felt personal comfort with Mr. Goldenberg and was not sure that I trusted  
 25 him. It was just a feeling and not a good one. My instincts led me to do some background research  
 26 on Google and at that time I realized he had had some run-in with the Securities and Exchange  
 27 Commission. At that point, I concluded that acquiring GASP would not be in the best interest of

1 PS'Soft and was the wrong product/solution to solve our product performance issue and that I was  
2 not interested in working with Mr. Goldenberg.

3 3. At no time did Mr. Gottlieb seek to dissuade me from working with Attest or Mr.  
4 Goldenberg. On the contrary, Mr. Gottlieb promoted the idea though his involvement was minimal  
5 and my negotiations were directly with Murray Goldenberg after Mr. Gottlieb passed me over to Mr.  
6 Goldenberg after my initial call.

7 4. Mr. Gottlieb did advise me that he was only a consultant to Nacio. I did ask him if he  
8 had a non-compete with Nacio and he advised me that he did not. I did thereafter ask him if he  
9 would perform or consider doing some consulting work for PS'Soft. The consulting did not involve  
10 the GASP product and my decision to ask Mr. Gottlieb to consult with PS'Soft on computer  
11 technology issues had nothing to do with my decision not to acquire the GASP software product for  
12 PS'Soft. If someone were to allege, as I understand Nacio now has, that Mr. Gottlieb interfered in  
any way with those negotiations I had with Mr. Goldenberg and Nacio, that would be untrue.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing  
14 is true and correct. Executed this 31<sup>st</sup> day of July 2007 at AMERICA FLEX

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16 DARYL FRAHM

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